



BENTON-FRANKLIN HEALTH DISTRICT

Food Safety Program Enforcement Policy

Effective July, 2019

1.0 Policy Statement/Purpose

Provide a framework for enforcement actions when conducting food safety inspections, in accordance with Washington State Retail Food Code, Washington Administrative Code (WAC) 246-215.

This policy applies to food establishments permitted by Benton-Franklin Health District (BFHD), and does not apply to temporary food establishments.

2.0 Applicability

☒ Internal

☐ External

3.0 Policy

3.1 Imminent Health Hazard

"IMMINENT HEALTH HAZARD" means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury.

The following items may be considered an imminent health hazard:

- Sewage backup
- Interruption of water service to facilitate proper handwashing such as lack of hot or running water
- Power outage
- Insufficient equipment to facilitate proper temperature control of TCS food such as non-functional refrigeration equipment
- Damage caused by an accident or disaster, such as a fire or flood
- Onset of an apparent foodborne disease outbreak
- Misuse of poisonous or toxic materials
- Other circumstance that might endanger public health

A permit holder of a food establishment must immediately discontinue operations and notify BFHD if an imminent health hazard exists.

When BFHD staff finds unsanitary conditions or unsafe practices during the operation of a food establishment which, in their judgement, constitute an imminent hazard to public health, BFHD may require the food establishment to immediately cease operations and close. A food establishment required to close as a result of operating during an imminent health hazard will be closed a minimum of 2 hours and will require a follow-up inspection and approval from BFHD prior to re-opening.

3.2 Routine Inspection Procedures

During a routine inspection, BFHD staff will conduct a risk based inspection. During a risk based inspection, time, education, and corrective actions will be focused on violations and practices that have been directly linked to foodborne illness (foodborne illness risk factors). When a red item violation is observed during an inspection, BFHDH will notify the food establishment, in writing, the nature of the observation, rule that was violated, and any corrective action that was taken or if required a timeframe by which items must be corrected.

In general:

- a. Red Item violations (items 1-27) must be corrected immediately or when not immediately correctible, items must be corrected according to an established and approved compliance schedule. Failure to follow a compliance schedule may result in a follow-up inspection or permit suspension.
- b. Blue Item violations (items 28-50 on the inspection form) shall be corrected before the next routine inspection, or according to an approved compliance schedule. Failure to follow a compliance schedule may result in a follow-up inspection or permit suspension.

3.3 Follow-up Inspection Procedures

Failure of a routine, complaint, or other food safety inspection is when the red item point total is 35 or more and will require a follow-up inspection.

Unless otherwise noted in this document, failure of a follow-up inspection is when:

- a. The red item point total is 25 or more, or;
- b. A single red item violation of 10 points or more is found to be repeated from the previous routine, complaint, or other food safety inspection and any subsequent follow-up inspection.

All follow-up inspections should occur within 30 days. When the red item point total is 85 or more, a follow up inspection will occur within 72 hours with a program supervisor or lead.

- a. First failed follow-up inspection will require a second follow-up.
- b. Second failed follow-up inspection will:
 - Require a third follow-up; and
 - The permit holder or its authorized representative must submit a written food safety risk control plan or schedule an office conference within five working days of the failed second follow-up.

Failure to submit a written risk control plan or schedule an office conference within the required timeframe may result in permit suspension.

- c. Third failed follow-up inspection will:
 - Require a fourth follow-up, or
 - If the red item point total is 35 or more, result in permit suspension.
- d. Fourth failed follow-up inspection will result in permit suspension.

3.4 Probation Status

Any food safety inspection with a red item total of 85 or more will result in the food establishment being placed on probation for the next two routine inspections. While on probation, any subsequent inspection, routine or follow-up, with a red item point total of 85 or more will result in permit suspension.

3.5 Permit suspension

If the permit is suspended, the food establishment must discontinue operation. Duration of a permit suspension will be a minimum of two hours and will require a first suspension follow-up inspection after the permit is reinstated. If the permit holder wishes to have the permit reinstated, the permit holder or its authorized representative must schedule an office conference with the assigned inspector and a program supervisor or lead. The permit holder must provide or revise a written food safety risk control at or before the scheduled office conference. BFHD must approve the risk control plan prior to reinstatement of the permit. All fees owed to BFHD must be paid before reinstatement can occur.

- a. First failed suspension follow-up will:
 - Require a second suspension follow-up, or

- If the red item point total is 35 or more, result in permit suspension.
- b. Second failed suspension follow-up will result in permit suspension.

3.6 Impetus Fees

All follow-up inspections will be charged at the rate listed on the current BFHD Food Establishment Fee Schedule.

Following a permit suspension, a permit reinstatement fee will be charged, at the rate listed on the current BFHD Food Establishment Fee Schedule.

3.7 Appeals Process

Any person requesting appeal of an action by BFHD staff regarding an inspection or the administration of this policy may appeal in writing to the food safety program supervisor or program director within ten (10) days of a written notice or directive of BFHD staff.

If the written appeal does not provide sufficient evidence for the supervisor or director to change the BFHD staff decision:

- a. First appeal- within 14 days after receipt of an appeal, the supervisor or director may conduct an investigation in the disputed matter.
 - The investigation may include an administrative hearing. The investigation may include taking evidence orally and written from BFHD staff, the party aggrieved, and witnesses.
 - A decision will be given in writing to the person or party making the appeal.
 - Such investigation and/or hearing may take place sooner than 14 calendar days if the aggrieved party shows extraordinary hardship or duress caused by the BFHD staff decision.
- b. Second appeal-following a written request to the supervisor or manager, within ten (10) days of their decision, any person not satisfied with their decision or the results of the investigation shall make a written request for a hearing before the health officer in accordance with [Benton-Franklin District Board of Health Rules and Regulations No. 2](#), and Appendix A.

APPENDIX A

POLICY AND PROCEDURE FOR HEALTH OFFICER/ BOARD OF HEALTH HEARINGS AND APPEALS TO THE BOARD OF HEALTH

I. PURPOSE

The purpose of this policy is to enact an administrative process which will establish a procedure for submitting and processing requests for Hearings before the Health Officer and the Board of Health and a procedure for conducting Appeals to the Board of Health,.

II. SCOPE

This policy shall apply to all actions and decisions of the Benton-Franklin Health District except where a specific hearing and/or appeal procedure is provided.

III. HEALTH OFFICER HEARINGS

A. Submission of Request for Hearing.

1. Any person who is aggrieved by any action or decision made by the Benton-Franklin Health District may request a hearing before the Health Officer.
2. All requests shall be in writing and submitted to the Health Officer. Requests must be submitted within thirty (30) days following such action or decision.
3. All requests shall describe the action or decision for which the hearing is requested, and basis on which it is being contested.

B. Processing of Request for Health Officer Hearing

Within ten (10) working days after receipt of the request for hearing, the Health Officer shall take one of the following options: 1) Forward the request directly to the Board of Health for review. 2) Send a written Notification of Hearing to the person submitting the request. The Notification of Hearing shall, as a minimum, state the date, time and place of the Health Officer Hearing. The Health Officer shall set the date of the

hearing to be within thirty (30) days following the date on which the Notification of Hearing was sent.

C. Hearing Procedure

1. Hearings shall be conducted by the Health Officer.
2. The person requesting the hearing shall be allowed to present evidence and discuss the issues.
3. The District personnel involved shall be present and allowed to present evidence and discuss the issues.
4. If upon completion of the above testimony and discussion the Health Officer feels that additional information is necessary he may request such information before rendering his decision. The Health Officer shall render his decision in writing within ten (10) days after conclusion of the hearing, or receipt of any additional information requested, whichever is later.

IV. APPEALS HEARINGS

A. Submission of Request for Appeal

1. Any person who is aggrieved by any action or decision made by the District may request an appeals hearing before the Board of Health: PROVIDED, that he or she shall have first requested and received a hearing before the Health Officer as provided in Section III or the request for appeal has been forwarded to the Board of Health by the Health Officer as in Section III B.
2. All requests for an appeals hearings before the Board of Health shall be in writing and submitted to the Health Officer. Requests must be submitted within thirty (30) days following the Health Officer's decision under Section III.4.
3. All requests shall contain a description of the action or decision for which the appeals hearing is requested and the basis for which it is being contested.

B. Processing Request for Appeal

Within fifteen (15) working days following receipt of the request for an appeals hearing, the Health Officer shall send a written Notification of Appeal Hearing to the person submitting the request. The Notification of Appeal Hearing shall, as a minimum, state the date, time and place of the Appeal Hearing. The Health Officer shall set the date of the Appeal Hearing to be at the next regularly scheduled Board of Health meeting or within thirty (30) days following the date on which the Notification of Hearing was received.

C. Hearing Procedure

1. The Chairman of the Board of Health shall serve as Chairman of the Appeal Hearing. Two members from each County of the District Board of Health shall constitute a quorum.
2. The person requesting the Appeal Hearing shall be allowed to present evidence and discuss the issues.
3. The District personnel involved shall be present and allowed to present the evidence and discuss the issues.
4. The Health Officer shall be allowed to discuss the issues, including the reasons for the decision rendered at the Health Officer's Hearing (if one has been held).

If upon completion of the above testimony and discussion the Board feels that additional information is necessary it may request such information before rendering its decision. The Board shall render its decision in writing within ten (10) days after conclusion of the hearing, or receipt of any additional information requested, whichever is later. Said decision by the Board of Health shall constitute a final action of this administrative process.